(2002) 04 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 19948 of 1998 and WMP No. 30215 of 1998

K. Chandrasekaran — APPELLANT

Vs

The Joint Chief Controller of Explosives (South Circle) Sastri Bhavan, Chennai, The Hindustan Petroleum Corporation Ltd., Senior Regional Manager, Chennai and Mr. C. Albert Morris — RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:
Petroleum Rules, 1976 — Rule 144, 151, 153, 153(1)

Citation : (2002) 04 MAD CK 0076

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : T.R. Mani, S.C. for T.M. Hariharan, for the Appellant; Meera Gupta, ACGSC, M. Veusami and K. Kumar, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of mandamus forbearing the first respondent, the Joint Chief Controller of

Explosives, South Circle, Chennai-6 from renewing the licence No.Ma.6315 issued to the 2nd respondent to store petroleum in R.S.No.242/2,

Thattanchavadi, Pondicherry, beyond 31.12.1998.

2. This court ordered notice of motion on 18.12.1998. The respondents have been served and have filed their counter.

3. The petitioner who claims to be the owner of the land measuring 11050 sq.ft., comprised in R.S.No.242/2, Thattanchavadi Revenue Village,

Oulgaret Commune, Pondicherry, hereinafter called as the demised land, leased out the same to the third respondent for a period of ten years

commencing from 1.10.1986 to 30.9.1996 in terms of a registered lease deed dated 7.10.1986 to run a petroleum bunk as a dealer of the

Hindustan Petroleum Corporation Ltd., the second respondent herein. The third respondent is running a petrol bunk in the demised site. The

deputy Chief Controller of Explosives, Southern Circle, granted petroleum storage licence for a period ending with 31.12.1984 and it has been

renewed periodically. The current licence expired on31.12.1998. The lease had come to an end on 30th September, 1996. During the currency of

the lease the petitioner instituted O.s.No.68 of 1994 on the file of the sub court, pondicherry against the third respondent and the second

respondent for eviction. The suit is pending. By notice dated 24.8.1996 addressed to the respondents 2 and 3, the petitioner terminated the lease

with the end of the lease period, namely 30th September, 1996 and called upon them to vacate and hand over vacant possession of the demised

property. Subsequently, the suit has been withdrawn with liberty to file a fresh suit on the same cause of action.

4. The third respondent sent a reply dated 30th September, 1996 to the said notice dated 24 August 1996 contending that the agreement provides

for further renewal, that there is no question of lease ending by efflux of time, that as essential commodity which is being sold, lease cannot be

determined, that the third respondent is also entitled to the benefit of the Pondicherry Buildings (lease and Rent) Control Act, that more than Rs.25

lakhs have been invested in the business and that the petitioners demand is baseless. Subsequent to the termination, the third respondent sent three

bankers cheques towards rental arrears. A reply was sent stating that status of the petitioner is that of an encroacher or a trespasser, that the

payments will be adjusted towards compensation payable by the third respondent and that the encashment should not be treated or considered as

consent for occupying the demised property. The licence to store petroleum has been renewed by the first respondent upto 31.12.1998. The

petitioner caused a notice dated 21.8.1997 to the first respondent pointing out that the lease period had come to an end and that it has also been

terminated by notice dated 24.8.1996 and that the licence ought not to be renewed and that the licence ought to be cancelled in terms of Rule 153

of the Petroleum Rules 1976. The petitioner also addressed the additional District Magistrate, Government of Pondicherry pointing out that the

lease of the third respondent has been terminated and that no objection certificate issued ought to be cancelled under Rule 151 of the Petroleum

Rules 1976.

5. The petitioner also caused a notice to the second respondent about the termination of tenancy and that the third respondent has no right to

continue, that the occupation of the third respondent is illegal, that the second respondent is abetting unlawful action of the third respondent and

that the dealership granted to the third respondent should be cancelled. There has been no reply. According to the petitioner in terms of Rule

153(1)(i) of the Petroleum Rules, when no objection certificate is cancelled under Rule 151 (1), there is no reason or rhyme for the first respondent

to grant the licence. It is contended that Rule 153 (1)(i) of the Petroleum Rules, 1976 provides that every licence granted shall stand cancelled if

the licensee ceases to have any right to the sight for storing petroleum. As the first respondent has not taken further steps the present writ petition

has been filed seeking the relief of mandamus.

6. The first respondent has filed a detailed counter. According to the first respondent, licence in Form XII of Petroleum Rule 1976 valid upto

31.12.1986 was granted in favour of the second respondent on 30.11.1984 and it has been renewed periodically upto 31.12.1998. The first

respondent is unaware of any of the agreement either lease or partnership, as the case may be and that as no objection certificate has been issued,

the licence has been issued. The licence granted is based upon the NOC granted by the District authority, who only decides the person who has

the right to site. The licence had been granted to the second respondent. The first respondent has no jurisdiction to go into tenancy dispute arising

between the petitioner and the other respondents. The property is under physical possession of respondents 2 and 3. No order of eviction has

been secured by the petitioner. The petitioner is not entitled to any relief.

7. The second respondent has filed a counter stating that the dealership was awarded to locate the retail outlet on the land which the third

respondent has taken on lease from the writ petitioner during the year 1984. The said lease dated 7.6.1984 was cancelled and a fresh lease

agreement dated 7.10.1986 was entered to be valid for a period of ten years with effect from 1.10.1986 to 30.9.1996. The retail outlet is being

run on the said demised site after obtaining the licence under the Petroleum Act and the Rules.

8. The petitioner approached the Additional District Magistrate, Revenue Department to cancel the NOC given for the retail outlet on the ground

that there is no valid lease agreement for the site. The third respondent continue to occupy the retail outlet site as tenant holding over under the

provisions of the Transfer of Property Act, besides he is entitled to protection under the Local Laws and as such the petitioner has to seek

possession of the premises in accordance with law. There is no violation of the provisions of the Petroleum Act and the Rules. It is obvious that the

petitioner has approached this court under the Petroleum Act and the Rules with a view to take possession of the site and such a procedure is not

in accordance with law besides being unconstitutional. The writ petition is not maintainable in law.

9. The third respondent has filed a counter denying all the averments while setting out particulars of the licence granted, filing of the suit and

withdrawal of the suit and the other earlier proceedings. The third respondent also stated that he had sent a reply. The third respondent contends

that the petitioner is not entitled to any relief. The third respondent has got a valid NOC and therefore the first respondent is bound to issue a valid

licence under the Petroleum Rules. Under the Petroleum Rules, the NOC could be cancelled if the authority is satisfied that the lessee ceased to

have right to store petroleum in the site. The third respondent claims that he is a lessee even as on today. The third respondent further claims that

he is a tenant and his tenancy is protected under the Rent Control Act and it is for the petitioner to seek for eviction by instituting appropriate

proceedings, that the construction placed on Rule 153 of the Petroleum Rules is a misconception. The petitioner has no locus standi to file the writ

petition and that the writ petition is liable to be dismissed on that ground. It is contended that the third respondent cannot be evicted unless the

requirements of law is complied with. The intention of the petitioner is neither bona fide nor legal, and the petitioner is not entitled to any relief.

10. The petitioner has filed a reply reiterating the averments set out in the affidavit filed in support of the writ petition, besides contending that the

third respondent is not a tenant as defined in the Rent Control Act and that he is not entitled to the benefit of the Rent Control Act, and that all the

objections put forward by the respondents are misconceived.

11. Heard Mr.T.R.Mani, learned senior counsel for Mr.T.M.Hariharan, appearing for the petitioner, Mrs.Meera Guptha, Additional Central

Government Standing counsel appearing for the first respondent, Mr.K.Kumar, learned counsel appearing for the second respondent, and

Mr.Jayashankar, learned counsel appearing for the third respondent.

12. The point that arises for consideration are:-

(A) Whether the petitioner is entitled to the relief of mandamus forbearing the first respondent from renewing the petroleum storage licence on the

demised property in favour of the second/third respondents?

(B) Whether the No Objection Certificate has been renewed in favour of the respondents 2 and 3?

(C) Whether the respondents are entitled to renewal of storage licence after the expiry of the lease period?

All these three points could be considered together since they revolve around the same set of facts.

13. Concedingly the lease granted by the petitioner in favour of the third respondent has already come to an end by efflux of time and the petitioner

has also called upon the third respondent to surrender possession on the expiry of the lease period. Concedingly, the NOC issued by the Executive

Magistrate has come to an end and the said Executive Magistrate has not granted NOC to enable the respondents 2 and 3 to seek for renewal of

storage licence for any period beyond the expiry date. When once the validity of the NOC had come to an end by efflux of time, whether the first

respondent could still renew the storage licence under the statutory rule in favour of the respondents 2 and 3 and is it permissible in law? is the

point which requires consideration in this writ petition.

14. According to Mr.K.Kuamr, learned counsel appearing for the second respondent and Mr.Vijayshankar, learned counsel appearing for the

third respondent, the possession of the third respondent is legal possession and the possession of the third respondent being that of a tenant holding

over in respect of the demised site. According to Mr.T.R.Mani, learned senior counsel appearing for the petitioner, after the expiry of the lease

period, none of the respondents have a right to continue and no NOC could be granted, nor a storage licence could be granted or renewal by the

first respondent in terms of the statutory rule. Mr.K.Kumar, learned counsel appearing for the second respondent referred to rule 144(1) of the

Petroleum Rules 1976 under which the NOC has been granted by the Additional Magistrate. It is admitted that the said NOC has already come to

an end and till date the licence under Rule 155 of the Petroleum Rules has not been renewed or extended in favour of the respondents 2 and 3 by

the first respondent. The above is afctual statement of facts and it is not being controverted nor it could be controverted.

15. Rule 144 of the Petroleum Rules provides for the issue of a NOC for grant of New Licence for running the Petroleum Bunk. Rule 144 reads

thus:-

NO OBJECTION CERTIFICATE:-

(1) Where the licensing authority is the Chief Controller or the Controller of Explosives as the case may be, an applicant for a new licence other

than a licence in [Form III, IX, XV or XVI] shall apply to the District Authority with two copies of the site plan showing the location of the

premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed

and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his

application Form VIII.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly

endorsed by him under his official seal.

(3) The Chief Controller or the Controller of Explosives as the case may be may refer an application not accompanied by a certificate granted

under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller of Explosives,

as the case may be, that any licence which has been applied for should not, in his opinion, be granted such licence shall not be issued without the

sanction of the Central Government.

16. The next relevant rule is Rule 151. Rule 151 provides that a No Objection Certificate granted under Rule 144 shall be liable to be cancelled by

the District Authorities or the Sate Government if the licensee cease to have any right to use the site for storing the petroleum products. In terms of

Rule 151, NOC if any issued could be relied upon and the licence could be granted during the currency of the lease period. When the licensee

ceases to have any right to use the site for storing petrol under Rule 151, the no objection certificate and storage license already granted will come

to an end or it could be cancelled.

17. The Supreme Court in Yogesh Kumar and others Vs. M/s. Bharat Petroleum Corpn. Ltd. and others, had occasion to consider the scope of

Rule 144 and 151 of the Petroleum Rules and held that NOC granted under Rule 144 can be cancelled wherever the licensee ceases to have any

right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to use of the site coming to an end or for

any other reason, whereby, in law, such a right to store petrol ceases. In this respect, the Apex Court held thus:-

3. Rule 144 of the said Rules deals with the issue of a `No Objection Certificate'' for a new licence for running a petrol pump. Rule 151 deals with

the cancellation of the No Objection Certificate and the said rule reads as follows:-

151.(1)"" A no objection certificate granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the

District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petrol:

Provided that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a No Objection Certificate shall record in writing the reasons for such cancellation and

shall immediately furnish to the licensee and to the licensing authority concerned a copy of the order cancelling the no objection certificate.

4. The High Court has rightly observed that the District Authority under Rule 151 can cancel the No Objection Certificate only when the licensee

ceases to have any right to use the site for storing petrol. However, there are certain subsequent observations made by the High Court in the

impugned judgement which might lead to an interference that so long as the licensee continues to have leasehold rights on the site, the No

Objection Certificate cannot be cancelled at all. That does not appear to be the correct position of law. On a reading of Sub rule (1) of Rule 151,

it is clear that a No Objection Certificate granted under Rule 144 can be cancelled wherever the licensee ceases to have any right to use the site

for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other

reason whereby, in law, the right to use the site for storing petrol ceases.

18. Applying the law as laid down by the Apex Court in the above pronouncement, it has to be held that on and from the date of expiry of the

lease No Objection Certificate, if any granted, either comes to an end, or it has to be cancelled. Consequently, the licence granted under Rule 155

also ceases and there could be no renewal of the storage licence. In this respect, Mr.T.R.Mani, learned counsel is well founded in his contentions.

19. Mr.K.Kumar, learned counsel appearing for the second respondent submitted that even after the expiry of the lease period the NOC granted

by the Executive Magistrate still subsists and is in force till the licensee is evicted or physically he is dispossessed. Till the respondents continue in

occupation they are entitled to renewal of licence under the Rule 149(5) of the Rules and the petitioner has to work out his remedies if any before a

competent civil court.

20. Mr.K.Kumar, learned counsel for the second respondent further contends that distribution of petroleum has to be continued in the interest of

the public as it is an essential commodity and any interruption will result in hardship to the public and therefore the petitioner is entitled to a writ of

mandamus as prayed for. The contention that public interest will suffer or that the supply of petroleum products to the common man has to be

continued is not a relevant criteria so far as Rule 144 and 151 or any other provisions of the Petroleum Act, 1934. It may be that the second and

third respondents may be effecting sale of petroleum products to common man, but that does not mean automatic renewal of NOC or renewal of

storage licence without any time limit even after the expiry of the lease period or order of eviction by a court or by a tribunal. If such a contention is

to be sustained it would amount to denial of the rights of the petitioner in respect of the demised property in question. Such a contention cannot be

sustained and the contentions advanced by respondents 2 and 3 cannot be sustained in law. It may be that they may continue in occupation till they are dispossessed legally, but on that score they cannot seek for the renewal of storage licence or for extension of NOC.

21. Mr.K.Kumar, learned counsel relied upon the pronouncements of this court as well as the Apex Court arising under the Tamil Nadu

Cinematograph Regulations and the Rules framed thereunder where the lessee of a theatre could continue even after the expiry of the lease period

though their possession is litigious possession. The said pronouncements will have no application to the extension of No objection Certificate or

renewal of storage licence under the petroleum rules, since the Rule 144 and 151 of the Petroleum rules are totally distinct from the Cinematograph

Regulation Act and the Rules which provides for lawful possession. Even under the Cinematograph Regulations, it is settled legal position that the

licensee should be in lawful possession and not in litigious possession.

22. The expression ""any right to use the site for storing petrol"" would mean a right to continue in possession under a valid grant of lease or right, as

the case may be, and not the continuance of occupation after the expiry of the lease period since it is not ""any right"". ""Any right"" means a legal right

to continue in occupation or possession without interruption"". Such is not the case here.

23. In the present case what has been leased out is a site and it is long time since the lease period had come to an end by efflux of time and

therefore the petitioner cannot claim any right though he may continue in physical possession till he is dispossessed in the manner known to law.

The point is covered by a decision of the Supreme Court in Yogesh Kumar and others Vs. Bharat Petroleum Corporation Ltd., referred supra. It

is on the point and the contention advanced by Mr.K.Kumar, learned counsel for the second respondent that ""any right"" would include right to

continue as a tenant holding over and therefore there should be renewal of NOC and grant of storage licence till the respondents 2 and 3 are

dispossessed cannot be sustained in law. The respondents contention deserves to be rejected in the light of the above pronouncement of the

Supreme Court and the very teeth of the statutory rule, which is mandatory.

24. In this case what was let out is only a vacant site, according to the petitioner, though there is some controversy. But the lease deed discloses

letting out of the vacant site and on that premise this writ petition is being disposed of.

25. The attention of this court is drawn to the pronouncement in Krishna Kishore Firm Vs. The Govt. of A.P. and others, :, where the Apex court

held that a tenant after expiry of the period of lease may be holding over to surrender to lessor who may not agree to renew the lease, nor he is

acquiesced in his continuance and such lessee cannot claim any right or interest. Such possession is neither legal, nor lawful, nor it is lawful for the

purpose of renewal of licence under the Madras Cinema Regulations Act, as has been held in M.C. Chockalingam and Others Vs. V.

Manickavasagam and Others, . The Apex Court further held that which is not stricto legalo may yet be lawful. But it should not be forbidden by

law. This is exactly the case here. Therefore a mandamus has to be issued as prayed for against the first respondent forbearing the first respondent

from renewing the storage licence under the Petroleum Rules. In other respects, it is for the petitioner to work out his remedies elsewhere to secure

physical possession of the demised site.

26. All the points are answered in favour of the petitioner and against the respondents only in respect of grant of No Objection Certificate and

grant of storage licence and the renewal thereof.

27. The writ petition is allowed and a mandamus is issued as against the first respondent as prayed for but without costs.

